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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Local Competition and Broadband Reporting )

CC Docket No. 99-301

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**PETITION FOR RECONSIDERATION OF IOWA TELECOM**

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Iowa Telecommunications Services, Inc. ("Iowa Telecom"), by its attorneys and pursuant to section 1.429 of the Federal Communications Commission's ("FCC") rules,<sup>1</sup> respectfully submits its petition for reconsideration of the Commission's new rules for local exchange carriers ("LECs") and other service providers to report basic data concerning local telephone competition and the deployment of broadband access services. These rules were adopted by the FCC in its *Reporting R&O*<sup>2</sup> and become effective on May 12, 2000. Compliance with the FCC's new rules would be costly and burdensome for rural telephone companies. Consequently, for rural telephone companies,<sup>3</sup> those rules should be revised and replaced with a program of annual statistical sampling. Such an approach would provide the FCC with the data it seeks while minimizing regulatory burdens and their associated costs for small and mid-sized carriers.

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<sup>1</sup> 47 C.F.R. §1.429.

<sup>2</sup> *Local Competition and Broadband Reporting*, Report and Order, 65 Fed. Reg. 19675 (2000) ("*Reporting R&O*").

<sup>3</sup> The new rules, as revised herein, would apply to only those LECs that qualify as "rural telephone companies" as defined in Section 3(37)(D) of the Telecommunications Act of 1934, as amended ("Act"), 47 U.S.C. §153(37)(D). LECs that do not qualify as rural telephone companies would remain subject to the reporting rules adopted in the *Reporting R&O*.

## **Background**

Iowa Telecom is a newly formed telecommunications company that will soon acquire the entire operations of GTE of the Midwest, Inc. (“GTE”) within the state of Iowa. Upon receipt of all necessary regulatory approvals and after closing the transaction with GTE, Iowa Telecom will provide telecommunications services to customers served by approximately 286,000 access lines spread throughout Iowa, in 296 individual exchanges. Iowa Telecom’s operations will be very rural in nature. It will serve only two cities with populations that exceed 10,000: Newton (15,371) and Fairfield (10,332), based on the U.S. Bureau of the Census’ July 1, 1998 population estimates. Therefore, pursuant to Section 3(37)(D) of the Communications Act of 1934, as amended (“Act”),<sup>4</sup> Iowa Telecom will qualify for rural telephone company status.

Iowa Telecom did not file comments in this proceeding because it was only created in mid-1999 and has been busily engaged in organization and planning activities since that time. However, Iowa Telecom expects to close its transaction with GTE at the end of the second quarter of 2000 and, after it begins its operations, Iowa Telecom would be adversely affected by the FCC’s new rules. Accordingly, Iowa Telecom is seeking reconsideration of the new local competition and broadband deployment rules as they apply to rural telephone companies. As discussed below, Iowa Telecom recommends that the FCC use statistical sampling to gather data for only markets served by rural telephone companies.

### **The FCC Should Reconsider Its Rules to Use Statistical Sampling for Gathering Data from Rural LECs**

The FCC has an understandable desire to obtain as much accurate data about local telephone competition and the deployment of broadband access services as is reasonably

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<sup>4</sup> 47 U.S.C. §153(37)(D).

possible. Similarly, as a national agency, the FCC has a need to have information about rural America. However, it does not follow that, because the FCC has a need for information about rural markets, that LECs that serve these markets must incur considerable costs to provide data to the FCC on a semi-annual basis. The public interest would be better served if the FCC uses statistical sampling to obtain data from rural LECs. Iowa Telecom recommends that such sampling occur on an annual basis only.

The *Reporting R&O* wisely exempted small LECs that do not provide service to at least 10,000 access lines within a state from the new reporting requirements. However, the rule's threshold does not provide any relief for many mid-sized LECs, such as Iowa Telecom, which serve primarily rural communities. Unless the FCC reconsiders its *Reporting R&O*, Iowa Telecom would be forced to devote significant resources to design a mechanized system or, at least, a standardized manual procedure to gather pertinent data on an on-going basis and submit it to the FCC. Those resources can be better used in the provision of services to rural customers.

Rather than require mid-sized, rural LECs, such as Iowa Telecom, to incur these additional costs, the FCC should adopt a rule that would use statistical sampling for all non-metropolitan markets. Also, such sampling should occur only on an annual basis, rather than semi-annually. There is no need for more frequent data from rural markets.

The FCC relies on statistical sampling for many important functions. For example, the FCC has historically allowed and continues to allow many small LECs to calculate their interstate revenues based on statistical samples through the average schedule settlement process.<sup>5</sup>

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<sup>5</sup> See, e.g., *MTS and WATS Market Structure*, Report and Order, 103 FCC 2d 1017, 1019-20 (1986). In this order, the FCC approved new average schedule settlement payments that were based on a statistical analysis of the operating costs of other LECs that was conducted by the National Exchange Carrier Association ("NECA"). This new statistical analysis approach replaced an earlier one that compensated average schedule LECs based on mean revenues per message.

The FCC uses statistical sampling to obtain data necessary to fulfill other statutory duties. For example, the FCC uses statistical sampling to obtain “the average rates for basic cable service, cable programming service, and equipment for systems that are subject to effective competition and for systems not subject to effective competition.”<sup>6</sup> The FCC has also utilized statistical sampling as part of its continuing property record audits of the former Bell Operating Companies.<sup>7</sup> The FCC’s jurisdictional separations rules often require the use of a statistical sample. For example, section 36.123(c)(1)(ii) of the Commission’s rules provides in applicable part: “The directory assistance weighted standard work seconds of each type further are classified among the operations on the basis of an analysis of a representative sample of directory assistance calls ....”<sup>8</sup>

Moreover, the courts have historically recognized that detailed investigation and reporting of data to a regulatory agency could be too expensive for a carrier to maintain over a long period of time.<sup>9</sup> The *Rowland* case involved a dispute over the reasonableness of intrastate rates for transportation that required a “division of expense and income between state and interstate business.” The railroad in question made a detailed investigation and developed data for a two-month period that it used to demonstrate that its intrastate costs greatly exceeded its interstate costs. The State of Arkansas, which opposed the railroad, argued that data from November and December 1913 was insufficient to prove the railroad’s case. However, Justice

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<sup>6</sup> *Implementation of Section 3 of the Cable Television Consumer Protection and Competition Act of 1992 and Statistical Report on Average Rates for Basic Service, Cable Programming and Equipment*, Order, 10 FCC Rcd 13200 (1995).

<sup>7</sup> *Ameritech Corporation Telephone Operating Companies’ Continuing Property Records Audit*, Notice of Inquiry, 14 FCC Rcd 7019 (1999).

<sup>8</sup> 47 C.F.R. §36.123(c)(1)(ii).

<sup>9</sup> *Rowland v. Boyle*, 244 U.S. 106 (1917), Holmes, J.

Holmes rejected Arkansas' argument and upheld the validity of the use of a sample for ratemaking purposes.

Similarly, courts have accepted the basic premise of the use of statistical sampling to be reasonable for average schedule settlements. "Precise determination of a local company's costs in all relevant areas may require extensive data collection, analysis, reporting, and auditing, which can be a difficult and costly burden for small telephone companies."<sup>10</sup>

Iowa Telecom submits that the FCC can readily satisfy its obligations under the Act and better serve the public interest by using sample data for rural markets. Potentially, the FCC could work with the United States Telecom Association ("USTA") or the National Exchange Carrier Association ("NECA") to develop a reasonable method for obtaining meaningful data from rural markets through the use of sampling.<sup>11</sup> If the Commission takes this approach, it would have access to material data on local competition and broadband deployment for rural markets, while rural LECs could mitigate the regulatory burden.<sup>12</sup>

### **Congress Has Always Required the FCC to Minimize Regulatory Burdens for Rural Telephone Companies**

Congress has always recognized the vast differences between rural telephone companies and larger carriers. Section 2(b)(2) of the Act<sup>13</sup> expressly provides that the FCC does not have any jurisdiction over "any carrier engaged in interstate or foreign communication solely through

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<sup>10</sup> *National Ass'n of Regulatory Utility Comm'rs v FCC*, 737 F.2d 1095, 1127 (D.C. Cir. 1984), *cert. denied*, 469 U.S. 1227 (1985).

<sup>11</sup> The FCC may also want to obtain the expertise of other organizations, such as the Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO"), the Personal Communications Industry Association ("PCIA"), the Cellular Telecommunications Industry Association ("CTIA"), the Association for Local Telecommunications Services ("ALTS"), the National Cable Television Association ("NCTA"), and the National Association of Regulatory Utility Commissioners ("NARUC").

<sup>12</sup> Just as small LECs readily cooperate with NECA when they receive a request for information, so too would rural LECs cooperate with an occasional request for information on local competition and broadband development.

<sup>13</sup> 47 U.S.C. §152(b)(2).

physical connection with the facilities of another carrier not directly or indirectly controlling or controlled by, or under direct or indirect common control, with such carrier ... except that Sections 201 to 205 of this title shall, except as otherwise provided therein, apply ....”

The legislative history of Section 2(b)(2) makes clear that Congress intended to protect small, locally owned telephone companies that connect with another company’s toll line for interstate long distance calls from burdensome federal regulations.<sup>14</sup> The chairman of the House committee, Representative Rayburn, made similar comments. “Section 202(c) is a penal provision that will apply to those small independent companies made subject to Sections 201-205 inclusive, but exempted from the other provisions of the act under [§2(b)(2)].”<sup>15</sup>

From its earliest days, the FCC has recognized its limited statutory jurisdiction over connecting carriers. After receiving claims from many telephone carriers arguing that they were exempt from the “jurisdiction of the Commission, except as to Sections 201-205 of the Communications Act of 1934,” the FCC opened a proceeding “for the purpose of hearing arguments by such telephone companies claiming exemption under 2(b)(2) of the Act and any State regulatory commission desiring to be heard.”<sup>16</sup> Following that proceeding, the FCC declared that:

Every wire telephone carrier with one or more exchanges, or one or more toll lines within a single state, participating in interstate communication with another wire telephone carrier within the same state, is subject to Sections 201 to 205 only of the Act, except

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<sup>14</sup> See H.R. Rep. No. 1850, at 4 (1934); 78 Cong. Rec. 8846 (Remarks of Senator Clark) (1934); Hearings on H.R. 8301 before the House Committee on Interstate and Foreign Commerce, 73d Cong. 2d Sess. at 241 (testimony of Mr. F.B. MacKinnon) (1934). See also, *Declaratory Ruling on the Application of Section 2(b)(2) of the Communications Act of 1934 to Bell Operating Companies*, Order, 2 FCC Rcd 1750 (1987).

<sup>15</sup> 78 Cong. Rec. 10313.

<sup>16</sup> *Classification of Telephone Cos. (Sec. 2 (b) (2))*, 3 FCC 37, 38 (1935).

where the matter of control referred to in Section 2(b)(2) of the Act is involved.<sup>17</sup>

Throughout the years, many small telephone companies have received rulings by the FCC that they are entitled to this “connecting carrier” exception from regulation outside Sections 201-205 of the Act.<sup>18</sup> In the *Capital City Tel. Co.* case, the FCC excused a connecting carrier from providing responses to the detailed information requests that the FCC had directed to all interstate carriers. The FCC also held that the provision of interstate radio services “does not change the status of a carrier, which would otherwise be classified as a connecting carrier.”<sup>19</sup>

Even as it made sweeping changes to the Act with the Telecommunications Act of 1996 (“96 Act”), Congress continued to insist on relaxed regulation for rural telephone companies. For example, Section 251(f)(1) of the 96 Act,<sup>20</sup> exempts rural telephone companies from the interconnection and resale requirements of Section 251(c). Section 251(f)(2) permits those same companies to request modification or waiver of the requirements of Section 251(b) and (c). Indeed, House Report No. 104-204 indicates that even if a state public utilities commission (“PUC”) were to terminate a LEC’s rural exemption, that carrier can still apply for modification or waiver of any or all of the requirements of Section 251(b) and (c).<sup>21</sup>

Recently, the FCC adopted a Report and Order<sup>22</sup> that exempts rural telephone companies from the obligation to comply with the full panoply of rules and requirements for the

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<sup>17</sup> *Id.* at 39; *see also Princeton Tel. Co.*, 3 FCC 164, 165-68 (1936) (telephone company engaged in interstate communications solely through connection with an interstate carrier was determined by the FCC to be a connecting carrier that was subject only to regulation under Sections 201-205 of the Act).

<sup>18</sup> *See, e.g., Intra State Tel. Co.*, 3 FCC 170 (1936); *Capital City Tel. Co.*, 3 FCC 189 (1936); *Chillicothe Tel. Co.*, 3 FCC 233 (1936).

<sup>19</sup> *Id.* at 196.

<sup>20</sup> 47 U.S.C. §251(f).

<sup>21</sup> HOUSE REP. NO. 104-204 at 75 (1996), *reprinted in* 1996 U.S.C.C.A.N. 10, 41.

<sup>22</sup> *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 99-200, FCC 00-104 (rel. March 31, 2000).

administration of telephone numbers. For example, rural telephone companies will not be required to report their telephone number utilization data at the central office code (NXX) level, per rate center, under new section 52.15(f)(5)(ii) of the FCC's rules.<sup>23</sup> The FCC wisely decided that rural telephone companies, which do not provide number portability, should not be burdened with expending their limited resources to report telephone number usage by thousands block.

The FCC should continue to temper the application of regulatory requirements to rural telephone companies. The Commission should, therefore, grant reconsideration of its *Reporting R&O* as recommended herein by Iowa Telecom.

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<sup>23</sup> To be codified as 47 C.F.R. §52.15(f)(5)(ii).



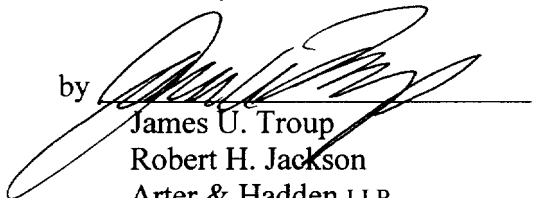
## Conclusion

For the reasons set forth above, Iowa Telecom requests that the FCC reconsider its *Reporting R&O* by substituting for rural telephone companies only, a program of statistical sampling on an annual basis, in lieu of the current local competition and broadband access deployment reporting requirements.

Respectfully submitted,

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by



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